THE MADRAS LAW JOURNAL

S. A, Kader, J.

Louis Xavier v.

Roobalavathyammal.

2nd August, 1985

C. R. P. Nos. 1674 and 1675 of 1985.

Civil Procedure Code (V of 1908), section 115—Revision by defendant against order holding Court-fee paid by the plaintiff to be correct—Revision held not maintainable when no jurisdiction is involved.

Held. It follows from I. L R. (1944) Mad. 626, (1961) 3 S. C. R. 1015 and (1974) 1 S. C. J. 270 that where the Court below has decided the question of Court-fee in favour of the plaintiff, the defendant is not entitled to challenge the same in revision unless any question of jurisdiction is involved. No question of jurisdiction is involved in the present case as the Subordinate Judge before whom the suit was instituted had unlimited jurisdiction. It is not the case of the revision petitioner (defendant) that he was in any way prejudiced by the undervaluation. Therefore no revision was maintainable.

G. Masilamani, for Petitioner.

R. S Venkatachari, for Respondent.

R. S. —— *Petition dismissed.*

S. A. Kader, J.

Govindasami Mudaliar v

T. Palani Mudaliar.

29th July, 1985.

C R. P. No. 1527 of 1983.

Civil Procedure Code (V of 1908), section 96 (4)—Suit on a promissory note—Defendant claiming benefit under the Tamil Nadu Act XIII of 1980—Plea of failure of consideration put forward — Contention rejected—Appeal by defendant—Appeal held not maintainable— Defendant taking the returned appeal memorandum— Revision by defendant against the order— Whether defendant is entitled to benefits of Act XIII of 1980 is not a question of law.

Held. No question of law is involved where the question was whether defendant could claim the benefit of Tamil Nadu Act XIII of 1980. The Subordinate Judge has rightly held that the appeal was not maintainable under section 96 (4) of the Civil Procedure Code. Even taking that this revision was against the judgment of the District Munsif, there are no grounds whatsoever to interfere with his conclusion. The learned District Munsif has scrupulously analysed the evidence, oral and documentary, and has come to the conclusion that the annual income of the defendant/revision petitioner far exceeded the statutory limit and he was not a debtor within the meaning of and not entitled to the benefit of Act XI.I of 1980. The said finding does not suffer from any infirmity.

R. S. Venkatachari, for Petitioner.

V. Syamalam, for Respondent.

R. S. —— *Petition dismissed.*

K. M. Natarajan, J.

K. Mohideen Sahib v.

Theodore Samuel.

10th July, 1985.

C. R. P. No. 4058 of 1982.

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) as amended by Act (XXIII of 1973), section 10 (2) (1)—Wilful default in payment of rent—Eviction sought for on that ground—Default when wilful.

Held: In this case in view of the fact that the petitioner (tenant) had sent the rent by money order and that the same was refused by the landlord repeatedly and in view of the fact that he has issued a notice calling upon the landlord to specify the name of the bank into which the rent has to be deposited and immediately after receipt of notice, he deposited the entire arrears, it cannot be said that the petitioner has committed wilful default in payment of rent. Both the Courts below have not properly appreciated the principles enunciated in the decision of the Supreme Court in 98 L. W. 49 in relation to the facts of the instant case and the same has resulted in the order of eviction. The order of eviction passed by the authorities below is not sustainable and is liable to be set aside.

I. Suryamurthi, for *A. Subramania Iyer*, for Petitioner.

V. Narayanaswamy, for Respondent.

R. S. —— *Petition dismissed.*

S. A. Kader, J.

M. H. Rozari v

Snehalatha P. Ruprell

1st July, 1985.

S. A. No. 799 of 1985.

(A) *Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) as amended by Act (XXIII of 1973), section 30—Exsmption—Monthly rent of Rs. 550—Made up of Rs. 350 towards rent and Rs. 200 towards amenities—Suit for ejectment filed in the Civil Court—Held maintainable— Act not applicable.*

(B) *Transfer of Property Act* (IV of 1882), *section 106—Notice to quit issued by the landlord—Use of the word 'end of July, 1980'—Held to be definite and notice valid.*

Held:—No doubt in this case the question whether the entire amount of Rs. 550 must be considered as rent or only as part of rent must depend upon the intention of the parties. The fact that the defendant (tenant) has been paying both the amounts under one cheque all these months and receiving one receipt indicates that the parties intended them as one payment. Applying the principle of the decision reported in A. I. R. 1957 S. C. 309 it is to be held that the rent is Rs. 550 and the Tamil Nadu Buildings (Lease and Rent Control) Act has no application.

On the question whether the notice to quit is proper or not the Court held that nothing could be more definite than that the words 'end of July' refers to the last date of July, 1980. The lease has been rightly determined by the end of July according to the Gregorian calendar by which the lease was governed and the tenant was called upon to vacate on 1-8-1980.

R. S. —— *Appeal dismissed.*

K. M. Natarajan, J.

A. W. Dhuruvar & Co. v.

P. M. Abdul Rahim

28th August, 1985

C. R. P. No. 3913 of 1982.

(A) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), as amended by Act (XXIII of 1973), section 10 (2)* (iii)— *Acts of waste— Petition for eviction—Allegations of removal of one door in the main entrance and blocking the drainage system by storing chips and hoy sticks and using of flames to solder —Held to constitute acts of waste.*

(B) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) as amended by Act (XXIII of 1973), section 25—Concurrent finding of fact—No interference warranted in revision.*

In the instant case, both the authorities below have taken into consideration the totalities of the various acts committed by the petitioner herein and arrived at a finding that the petitioner herein committed acts of waste as contemplated under section 10 (2) (*iii*) of Act XVIII of 1960. There is no merit in the contention that all the acts were done in the course of reasonable user of the premises and that it is not prejudicial to the interest of the landlord since removing the door, which is a permanent fixture and the blocking of the drainage and doing soldering work with flames where the wooden chips and hay-sticks were stored thereby causing fire hazard are not certainly acts of reasonable user of the building.

Since both the Courts below have concurrently found on evidence that the petitioner herein has committed acts of waste, as per the definition in the Act and there is no taint of illegality or unreasonableness resulting in miscarriage of justice, no interference is warranted in this revision.

G. K. Damodar Rao, **for** *S. C. Shah,* **for Petitioner,**

M. R. Narayanaswamy for *R. Srinivasan, K. Ragunathan* and *V. Prabhakar,* for Respondents.

R. S. —— *Petition dismissed.*

S. A. Kader, J.

Janaki v.

Prabath Finance by Partner.

2nd August, 1985

C. R. P. No. 4035 of 1984.

Civil Procedure Code (V of 1908), sections 52 and 60—Death of judgment-debtor in Motor Accident— Compensation awarded to the legal representative — Compensation amount whether forms part of the assets of the deceased—Whether liable to be attached.

Held: In 123 I. T. R. 601, a Bench of the Andhra Pradesh High Court has held that in order to hold that a particular property belonged to the estate of the deceased. (1) the property must be in existence at any time before the death of the deceased, (2) the deceased must have a beneficial interest in it *in praesenti* not contingent (3) the deceased must be in possession and control be it actual, constructive or beneficial of the property; and (4) the deceased must have power to dispose of such property. The amount of compensation awarded by the Accidents Claims Tribunal is payable to the legal heirs only on account of his death, The said amount cannot be said to have been part of the estate of the deceased. It is not therefore liable to be attached as assets of the deceased in the hands of the legal representatives.

S. V. Jayaraman, N. Maninarayanan and *K. Balachandar,* for Petitioner.

Mrs. N. R. Natarajan, for Respondent.

R. S. —— *Petition allowed.*

K. M. Natarajan, J.

Akkanaicker v. Rajagopal.

2nd July, 1985

C. R. P. No. 2476 of 1982.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) as amended by Act (XXIII of 1972), section 30—Exemption of the buildings under the provisions of the Act—Suit by the Landlord against the tenant for recovery of arrears of rent and for possession —Suit decreed on 30th March 1972—Appeal filed by the tenant dismissed on 20th June, 1980—Joint memo by both the parties—giving six months time to vacate —Failure to vacate—Building own building of landlord in the year 1968—Suit filed within three years of exemption—Decree obtained when the exemption was in force—Subsequent expiry of exemption—Execution petition filed by landlord—Application filed Objecting to execution —Effect of the joint memo—Held that the decree cannot be executed—Tenant can be evicted only under the provisions of the Act not otherwise.

In this case the suit property was constructed and completed in 1966 and the tenancy commenced on 1st November, 1968. The suit for arrears of rent and recovery of possession was filed on 7th October, 1969. The suit was decreed on 30th March, 1969. The tenant preferred an appeal and the same was dismissed on 1st March, 1973 on 20th June, 1980 both the parties filed a joint memo in which the tenant was given six months time to vacate. Since the tenant failed to vacate, execution petition was filed. The tenant filed an execution application stating that the decree was in executable and the same was dismissed. The tenant filed a revision.

Held: In the instant case admittedly the application has been filed only in the regular suit filed and during the execution proceedings, the petition has been filed nnder the provisions of the Civil Procedure Code. The mere fact that section 18 of the Act 18 of 1960 was added would not mean that the revision under sections 47 and 151 Code of Civil Procedure is a bar. In the instant case admittedly the suit property was constructed in 1968 and the suit was filed within a year after the construction. The amending Act came into force on 30-6-1973. The decree and the appeal were disposed of on 1-3-1973. The learned District Munsif held that in view of the fact that the decree was obtained when the exemption was in force, the same is executable and that the mere fact that subsequenily the exemption expired would not affect the said decree and the same is executable. In view of the provisions of the statute in Act 18 of 1960 as amended by Act XXIII of 1973, that the decree for eviction came in executable on the filing of a joint memo agreeing to vacate within six months is of no consequence. The tenant can be evicted only under the provisions of the said Act and not otherwise. The order passed by the lower Court is set aside and the revision allowed.

R. Thirugnanam, for Petitioner.

S. V. Jayaraman, for Respondent.

Revision allowed